

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEMETROIS T. DIXSON,
Plaintiff,

v.

BETHLEHEM ASHEME HAILE, et al.,
Defendants.

No. 2:20-cv-00998-CKD P

ORDER

Plaintiff is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect twenty percent of the preceding month's income credited to plaintiff's prison trust account and forward it to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a

1 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 2 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
 3 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
 4 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

5 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 6 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 7 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
 8 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 9 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 10 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 11 Cir. 1989); Franklin, 745 F.2d at 1227.

12 In order to avoid dismissal for failure to state a claim a complaint must contain more than
 13 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
 14 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
 15 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
 16 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
 17 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
 18 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
 19 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
 20 at 678. When considering whether a complaint states a claim upon which relief can be granted,
 21 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
 22 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
 23 U.S. 232, 236 (1974).

24 **II. Allegations in the Complaint**

25 At all times relevant to the allegations in the complaint, plaintiff was an inmate at the
 26 California Medical Facility (“CMF”). Plaintiff experienced recurring episodes of profuse
 27 bleeding from his lips. In February 2019, plaintiff was examined by defendant Haile, his primary
 28 care provider, who “indicated that plaintiff was lying about his condition or hallucinating his

1 symptom of bleeding.” ECF No. 1 at 12. Defendant Haile refused to provide plaintiff with any
 2 further medical attention and refused to refer him to a specialist to determine the cause of the
 3 bleeding. Defendant Singsonganitano, a registered nurse, reviewed every medical request form
 4 that plaintiff submitted for his bleeding lips. Defendant Singsonganitano improperly diagnosed
 5 plaintiff’s condition and consistently advised him that his lips were just chapped and that he
 6 needed to drink more water. Plaintiff further alleges that defendant Austin, the Chief Executive
 7 Officer at CMF, “failed in her duty to fact-find and remedy plaintiff’s trauma, pain and suffering”
 8 when she reviewed his health care grievance related to this medical problem. ECF No. 1 at 16.
 9 Plaintiff’s lip condition was finally diagnosed as arterio-venous malformation (“AVM”) which
 10 required surgery. As a result of the improper diagnosis and delay in treatment, plaintiff requests
 11 compensatory and punitive damages.

12 **III. Legal Standards**

13 Denial or delay of medical care for a prisoner’s serious medical needs may constitute a
 14 violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
 15 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
 16 deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d
 17 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
 18 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

19 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439
 20 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other
 21 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the
 22 plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s
 23 condition could result in further significant injury or the ‘unnecessary and wanton infliction of
 24 pain.’” Id., citing Estelle, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he
 25 existence of an injury that a reasonable doctor or patient would find important and worthy of
 26 comment or treatment; the presence of a medical condition that significantly affects an
 27 individual’s daily activities; or the existence of chronic and substantial pain.’” Lopez, 203 F. 3d
 28 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

1 Second, the plaintiff must show the defendant's response to the need was deliberately
2 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act
3 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the
4 indifference. Id. Under this standard, the prison official must not only "be aware of facts from
5 which the inference could be drawn that a substantial risk of serious harm exists," but that person
6 "must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). This "subjective
7 approach" focuses only "on what a defendant's mental attitude actually was." Id. at 839. A
8 showing of merely negligent medical care is not enough to establish a constitutional violation.
9 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A
10 difference of opinion about the proper course of treatment is not deliberate indifference, nor does
11 a dispute between a prisoner and prison officials over the necessity for or extent of medical
12 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058
13 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of
14 medical treatment, "without more, is insufficient to state a claim of deliberate medical
15 indifference." Shapley v. Nev. Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985).
16 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the
17 prisoner must show that the delay caused "significant harm and that Defendants should have
18 known this to be the case." Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

19 IV. Analysis

20 After conducting the required screening, the court finds that this case may proceed
21 against defendants Haile and Singsonganitano for claims of deliberate indifference to plaintiff's
22 serious medical needs in violation of the Eighth Amendment. With respect to the Eighth
23 Amendment claim against defendant Austin, plaintiff fails to state a claim for which relief can be
24 granted. The attachments to plaintiff's complaint demonstrate that defendant Austin reviewed his
25 health care grievance on October 31, 2019, after plaintiff was already diagnosed with an AVM
26 and approved for treatment at the procedure clinic. ECF No. 1 at 58-60. Therefore, it does not
27 appear that defendant Austin was responsible for the delay in properly diagnosing or treating
28 plaintiff's lip condition. Plaintiff may elect to proceed immediately on the Eighth Amendment

1 claims against defendants Haile and Singsonganitano; or, in the alternative, plaintiff may elect to
2 amend his complaint to attempt to cure the deficiencies with respect to the remaining defendant.
3 See Lopez v. Smith, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (district courts must afford
4 pro se litigants an opportunity to amend to correct any deficiency in their complaints). If plaintiff
5 chooses to proceed on the Eighth Amendment claims found cognizable in this screening order,
6 the court will construe this as a request to voluntarily dismiss the additional claim and defendant
7 pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

8 If plaintiff chooses to file an amended complaint, plaintiff must demonstrate how the
9 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
10 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must
11 allege in specific terms how each named defendant is involved. There can be no liability under
12 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's
13 actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague
14 and conclusory allegations of official participation in civil rights violations are not sufficient.
15 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

16 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
17 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
18 complaint be complete in itself without reference to any prior pleading. This is because, as a
19 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
20 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
21 longer serves any function in the case. Therefore, in an amended complaint, as in an original
22 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

23 **V. Plain Language Summary for Pro Se Party**

24 The following information is meant to explain this order in plain English and is not
25 intended as legal advice.

26 Some of the allegations in the complaint state claims for relief against the defendants, and
27 some do not. You may choose to file an amended complaint to try to fix these problems. You
28 must decide if you want to (1) proceed immediately on the Eighth Amendment deliberate

1 indifference claims against defendants Haile and Singsonganitano; or, (2) try to amend the
2 complaint to fix the problems identified in this order with respect to defendant Austin. Once you
3 decide, you must complete the attached Notice of Election form by checking only one of the
4 appropriate boxes and return it to the court.

5 Once the court receives the Notice of Election, it will issue an order telling you what you
6 need to do next (i.e. file an amended complaint or wait for the defendants to be served with a
7 copy of the complaint). If you do not return this Notice, the court will order service of the
8 complaint only on the claims found cognizable in this screening order and will recommend
9 dismissing the remaining claims.

10 Accordingly, it is HEREBY ORDERED that:

11 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.

12 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
13 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
14 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
15 California Department of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff has the option to proceed immediately on the Eighth Amendment deliberate
17 indifference claims against defendants Haile and Singsonganitano; or, plaintiff may choose to
18 amend the complaint to fix the deficiencies identified in this order with respect to defendant
19 Austin.

20 4. Within 21 days from the date of this order, plaintiff shall complete and return the
21 attached Notice of Election form notifying the court whether he wants to proceed on the screened
22 complaint or whether he wants time to file a first amended complaint.

23 5. If plaintiff fails to return the attached Notice of Election within the time provided, the
24 court will construe this failure as consent to dismiss the deficient claims and proceed only on the
25 cognizable claims identified above.

26 Dated: October 6, 2020

27 
CAROLYN K. DELANEY
28 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF ELECTION

Check only one option:

_____ Plaintiff wants to proceed immediately on the Eighth Amendment deliberate indifference claims against defendants Haile and Singsonganitano. Plaintiff voluntarily dismisses the remaining defendant; or,

_____ Plaintiff wants time to file a first amended complaint.

DATED:

Plaintiff